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TLC 3100 MAIL ROOM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: DR. MICHAEL N. BERKE  
FOR: SELF-ADMINISTERED BACK MASSAGE  
SERIAL NO.: 09/609,166  
FILED: JULY 3, 2000  
EXAMINER: JUSTINE YU

**SUPPLEMENT TO PETITION TO THE COMMISSIONER**  
**PURSUANT TO 37 CFR 1.181**

Hon. Commissioner of Patents  
and Trademarks  
Washington, DC 20231

Sir:

It is respectfully requested that there be made of record the accompanying "Advisory Action" and "Interview Summary" which was made of record in the above captioned application subsequent to the filing of PETITION TO THE COMMISSIONER PURSUANT TO 37 CFR 1.181 dated November 1, 2001.

In the "Advisory Action" the examiner has in fact checked box 6.

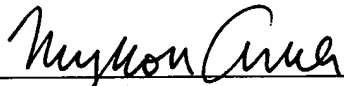
In the "Interview Summary" the examiner correctly points out the confusion of the Advisory Action mailed 10/23/01. Also, the examiner expresses an opinion that the newly added detail structure of the massaging device raises a new issue but does not indicate the factual basis for this opinion and, more particularly, the examiner does not refute applicant's contention that "the structure added did not introduce a new concept but was a tactical narrowing of the

claim to achieve an allowance over the cited reference . . . to foreshorten the prosecution of the application.”

It is respectfully requested that the relief requested in the Petition be granted.

Respectfully,

MYRON AMER, P.C.  
Attorney for Applicant


By:   
Myron Amer  
Reg. No: 18,650

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Dated: November 9, 2001



# Advisory Action

Application No. <b>09/609,166</b>	Applicant(s) <b>Berke</b>	
Examiner <b>Justine Yu</b>	Art Unit <b>3764</b>	

MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Oct 9, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached paper.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1
9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
11. ☐ Other: \_\_\_\_\_



# Interview Summary

Application No. 09/609,166	Applicant(s) Berke	
Examiner Justine Yu	Group Art Unit 3764	

All participants (applicant, applicant's representative, PTO personnel):

(1) Justine Yu

(3) \_\_\_\_\_

(2) Myron Amer

(4) \_\_\_\_\_

Date of Interview Oct 30, 2001

Type: a) ☐ Telephonic b) ☐ Video Conference

c) ☒ Personal (copy is given to 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No. If yes, brief description:

Claim(s) discussed: 1

Identification of prior art discussed:

None

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Applicant correctly pointed out the confusing in the Advisory Action mailed 10/23/01. A new advisory action will be mailed later. The examiner apologized for the inconvenience.

The applicant argued that the structure that was proposed after the final office action narrowed the scope of the claim which can not be considered as a new issue. However, it is the examiner's opinion that the newly added detail structure of the massaging device raised new issue that would require further consideration and search.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☐ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.